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NASA Policy Directive

COMPLIANCE IS MANDATORY

NPD 1370.1

Effective Date: October 26,
2007

Expiration Date: October 26,
2012

[Printable Format \(PDF\)](#)

Request Notification of Change

(NASA Only)

Subject: Reimbursable Utilization of NASA Facilities by Foreign Entities and Foreign-Sponsored Research

Responsible Office:

1. POLICY

a. This NASA Policy Directive (NPD) provides general policy direction and identifies principles to be considered by NASA officials in:

(1) undertaking reimbursable use of NASA facilities by, or for the benefit of, foreign entities; or

(2) conducting research on a reimbursable basis in collaboration with, or for the benefit of, foreign entities.

b. This NPD supplements and clarifies existing requirements found in relevant NPDs and NASA Procedural Requirements (NPRs).

c. Several provisions of law and policy authorize and direct NASA to cooperate and collaborate with foreign entities, including the National Aeronautics and Space Act of 1958 (Space Act), the U.S. National Aeronautics Research and Development Policy of December 20, 2006, the U.S. National Space Policy of August 31, 2006, and the U.S. Space Exploration Policy of January 14, 2004. Such cooperation and collaboration are subject to important standards and safeguards, reflecting the significant investment made by the Congress and people of the United States in NASA's world-class facilities and expertise. Accordingly, the principles described in this NPD shall govern the evaluation of potential reimbursable use by or for the benefit of foreign entities of NASA facilities and research capabilities.

d. Definitions. For the purposes of this NPD:

(1) "Facility" means all or any portion of a separately located and officially defined area of real property in which NASA exercises a real property interest and which has been

designated as a NASA resource by an appropriate authority; or, where NASA has jurisdiction over real property agreements with foreign governments, or by rights of occupation.

(2) "Foreign entity" means a legal entity that is not established under a state or Federal law of the United States and includes a commercial, noncommercial, or governmental entity of a foreign sovereign.

(3) "For the benefit of a foreign entity" means that a foreign entity could have access to and use of any deliverable items (including any data) resulting from a reimbursable agreement by virtue of a contractual or other relationship (including common corporate ownership) with a party having such an agreement with NASA.

(4) "Fundamental research" means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. Fundamental research is distinct from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

e. Coordination with NASA Headquarters. In all cases, use of NASA facilities or services by, or for the benefit of, foreign entities shall be coordinated with, and receive the concurrence of, the NASA Headquarters Office of External Relations and the relevant NASA Headquarters Mission Directorate(s). The Office of External Relations has the authority to execute agreements with foreign entities required for reimbursable activities, as described in paragraph 1.o., below. Additionally, the Office of External Relations shall consult with the Office of Public Affairs and the Office of Legislative and Intergovernmental Affairs, and other appropriate offices prior to final approval.

f. Consistency with NASA's Mission. The use of NASA facilities or capabilities shall be consistent with the Agency's mission, as described in the Space Act. Therefore, any proposed foreign reimbursable use of NASA's facilities or resources, whether commercial, academic, governmental, or otherwise, shall demonstrate that it is consistent with NASA's mission. Coordination of proposed reimbursable activities with the relevant NASA Mission Directorate(s), as required in paragraph d. above, and in section 5 of this NPD, will ensure that such activities are properly aligned with NASA's mission.

Additionally, reimbursable uses shall fulfill one or more of the following conditions:

(1) Sustain or enhance facilities and lower operational costs for current and future needs of NASA's missions, in compliance with NASA facilities management policies.

(2) Sustain or enhance skills that are or are projected to be needed to support NASA's missions.

(3) Sustain or enhance a functional area not adequately funded by NASA programs but required for current or future support of NASA's missions.

g. Scientific, Technical, Economic, or Foreign Policy Benefit to NASA and the United States. All reimbursable arrangements shall advance one or more of NASA's objectives as described in the Space Act. For example, the goal of advancing NASA's objectives may be met by ensuring access to test results, enabling technology transfer to NASA or to the public sector, enhancing cross-fertilization of knowledge, providing technical assistance to allies, contributing to a mission or to operational infrastructure systems, providing unique services, enhancing NASA workforce skills and capabilities, sharing of

data rights or publication of results, and sharing of intellectual property rights or patent licensing arrangements. These or other contributions may provide benefits to NASA or to the general public that justify foreign reimbursable use of NASA resources. Additionally, in certain circumstances, reimbursable collaboration with a foreign entity may directly support broader U.S. policy or interests, including important foreign policy objectives.

h. Data and Publication Rights. The "data rights" clauses included in Space Act Agreements for reimbursable test or research activities provide a useful gauge to assess the appropriateness and desirability of proposed reimbursable uses of NASA's facilities and capabilities by, or for the benefit of, foreign entities. As described above, reimbursable arrangements which include shared data rights, or which authorize broad dissemination of the results of fundamental research related to NASA's missions, provide a benefit that is consistent with NASA's Space Act mandate to "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof." 42 U.S.C. §§ 2473(a)(3). Where the data from such activities is made available to the broad scientific community (or the public at-large), the proposed use normally shall be approved, subject to the activity's consistency with the other policy standards described in this NPD. Conversely, an agreement to grant a foreign entity exclusive rights to test or research results minimizes the scientific benefit to NASA and the public and shall be carefully evaluated and approved only on a case-by-case basis, consistent with the other principles enumerated in this NPD.

i. Noninterference with NASA Priorities. Reimbursable use of NASA facilities and services by, or for the benefit of, foreign entities shall not interfere with NASA mission requirements or program or project activities. By its nature, reimbursable work would not otherwise be undertaken if NASA's facilities and capabilities were fully engaged in the execution of national programs or international cooperative activities. Therefore, any reimbursable work shall be secondary to NASA's nonreimbursable priorities, and NASA may reschedule, postpone, or terminate reimbursable work in accordance with Agency policy and the terms of the agreement under which the reimbursable work is to be performed. NASA shall seek to minimize the impact of prioritization on reimbursable work as appropriate in particular circumstances.

j. Noncompetition with the Private Sector. NASA shall not compete with the private sector. Both Federal statute and policy make this clear, and issues related to U.S. industrial competitiveness shall be considered in accommodating reimbursable projects with foreign entities. The U.S. National Space Policy of August 31, 2006, and the U.S. National Aeronautics Research and Development Policy of December 20, 2006, direct the Federal Government to use commercial capabilities and services to the maximum practical extent and to refrain from conducting activities that preclude, deter, or compete with U.S. commercial aeronautics, space, and other activities, unless required for national security or public safety. However, where equivalent commercial services are not available on reasonable terms, the Commercial Space Competitiveness Act, 15 U.S.C. § 5807, permits the Federal Government to allow non-Federal entities to use Federal space-related facilities on a reimbursable basis.

k. Protection Against Unwarranted International Technology Transfer and Consistency with U.S. Nonproliferation and Export Control Laws, Regulations, and Policies. Foreign use of NASA research capabilities or facilities shall be consistent with the nonproliferation and export control laws, regulations, and policies of the United States, and arrangements for such collaborative projects shall take into consideration the need to protect against inappropriate transfers of technology. While NASA technology is

generally furnished to foreign entities in order to fulfill NASA responsibilities in cooperative international agreements, the furnishing of technology to foreign entities under reimbursable arrangements shall be subject to a higher level of scrutiny. Improving the technical capabilities of U.S. adversaries and enhancing the performance of foreign competitors of the U.S. industrial base are not consistent with NASA's mission. Indeed, as a U.S. Government agency on the forefront of technological development in the fields of space, aeronautics, and science, NASA is obliged and committed to be a responsible steward of the technologies and capabilities entrusted to it by the Congress and the people of the United States. Accordingly, review by NASA Export Control Administrators is required for any proposal involving the reimbursable use of NASA facilities or capabilities by, or for the benefit of, foreign entities. This is particularly true in the case of advanced research and development activities, in contrast to fundamental research or basic testing programs or projects.

I. Conformance with Safety and Security Requirements. As described in NPD 8700.1, NASA Policy for Safety and Mission Success, it is well- established NASA policy to protect the public, the NASA workforce, the environment, and high-value equipment and property from potential harm as a result of NASA activities and operations by providing safe programs, technologies, operations, and facilities. NASA officials are responsible for the safety and mission success of their activities and must maintain the safe and successful functioning of facilities. Additionally, consistent with NPR 1600.1, NASA Security Program Procedural Requirements, and with NPR 2810.1, Security of Information Technology, NASA shall ensure the protection of people, property, and information whenever granting access to NASA facilities or capabilities, including access to NASA's Information Technology (IT) systems. Therefore, agreements governing foreign reimbursable use of the Agency's resources shall comply with NASA security, IT security, and safety policies and guidelines, including standards on facility operations, badging, credentials, and facility and IT system access.

m. Foreign Reimbursable Use of Wind Tunnels. Consistent with the requirements of 14 CFR § 1210, proposals for the use of NASA wind tunnels by or for foreign entities, including use of wind tunnels by U.S. companies with foreign participation (e.g., consortium projects), shall disclose the foreign interest in, or anticipated foreign benefit from, the tests to be conducted and shall be reviewed by the Office of External Relations, in consultation with the relevant Mission Directorate, for consistency with U.S. foreign policy and compatibility with section 102 of the Space Act. The other standards and principles identified in this NPD shall also be included in such review. Because the relevant regulations discourage the use of NASA wind tunnels for the sole benefit of foreign company projects that are unrelated to U.S. Government or U.S. industry programs or projects, requests for such reimbursable use shall additionally identify any compelling basis for approval.

n. Consistency with NASA Financial Management Policy for Determining, Allocating, and Billing Costs. All reimbursable activities subject to this NPD shall comply with NASA Financial Management Requirements, Volume 16, Reimbursable Agreements. Under NASA policies for reimbursable agreements, the customer is generally charged the full cost or market price, which is reviewed annually to ensure that it is appropriate, for the activity. However, if NASA is obtaining rights to intellectual property or data or some other benefit, the additional benefit may justify NASA's acceptance of reimbursement for less than the full cost or market price of its activities performed under the agreement. In such cases, the approving NASA official is responsible for determining that the partner's contribution is fair and reasonable and provides an adequate quid pro quo (i.e., equitable

exchange) when compared to NASA's contribution, the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA. In general, equivalent financial terms shall be provided to U.S. commercial and foreign entities for reimbursable use of NASA facilities or resources.

Note that, for use of NASA wind tunnels by U.S.-foreign consortia, 14 CFR 1210(c) provides that "a fee will be charged for these consortium projects unless, in these review procedures, it is determined that Government agency cooperative sponsorship warrants a non-fee arrangement."

o. Requirement for Agreement. Each foreign reimbursable project shall be established in a formal written and signed project or program agreement, coordinated through, concurred in, and executed by the Office of External Relations or delegated office, which specifically states the responsibilities of each partner. Specific authorities and requirements regarding agreements are provided in NPD 1050.1, Authority to Enter Into Space Act Agreements. General agreements that establish intent to explore and facilitate collaboration may be useful or necessary under exceptional circumstances; however, commitment by the Agency to collaborate in a specific research or test project is only made in a project-specific agreement after full coordination and approval of the proposed activity. To minimize complexity, the division of responsibilities between NASA and the foreign partner shall be clearly defined.

2. APPLICABILITY

This NPD applies to NASA Headquarters and NASA Centers, including Component Facilities.

3. AUTHORITY

42 U.S.C. 2451(d) (7), 2473(c), and 2475, Sections 102(d) (7), 203(c), and 205 of the National Aeronautics and Space Act of 1958, as amended.

4. APPLICABLE DOCUMENTS

- a. 15 U.S.C. 5807, Commercial Space Competitiveness Act.
- b. 42 U.S.C. 2451 et seq., the National Aeronautics and Space Act of 1958, as amended.
- c. 14 CFR 1210, Development Work for Industry in NASA Wind Tunnels.
- d. U.S. National Space Policy of August 31, 2006, National Security Presidential Directive-49.
- e. U.S. National Aeronautics Research and Development Policy of December 20, 2006.
- f. NPD 1050.1, Authority To Enter Into Space Act Agreements.
- g. NPR 1600.1, NASA Security Program.
- h. NPR 2810.1, Security of Information Technology.

- i. NPD 8700.1, NASA Policy for Safety and Mission Success.
- j. NASA Advisory Implementing Instruction 1050-1, Space Act Agreements Guide.
- k. NASA Financial Management Requirements, Volume 16, Reimbursable Agreements.

5. RESPONSIBILITY

a.(1). Center Directors and Associate Administrators shall ensure that proposals for reimbursable collaboration with, or for the benefit of, foreign entities are consistent with the policy guidelines described in this NPD.

(2). Center Directors and Associate Administrators shall identify the foreign interest in, or anticipated foreign benefit from, such collaboration and shall certify compliance with the Commercial Space Competitiveness Act, 15 U.S.C. § 5807, regarding the unavailability of equivalent commercial services on reasonable terms. Center Directors may require of proposed users documentation sufficient to demonstrate the unavailability of equivalent services on reasonable terms.

(3). All such proposals and certifications shall be referred promptly to the Office of External Relations, NASA Headquarters, for coordination within NASA and with other Government agencies, as appropriate, in conjunction with the appropriate Mission Directorate(s).

b.(1). The Office of External Relations shall coordinate with the Office of the General Counsel, the Office of the Chief Financial Officer, and other appropriate offices to ensure that all foreign utilization of NASA facilities and foreign-sponsored research is consistent with law and policy, including interagency consultation, when required.

(2). In addition, the Office of External Relations shall work with the cognizant Mission Directorate, Center, or Component Facility in considering and, as appropriate, developing and formalizing proposals for reimbursable collaboration with, or for the benefit of, foreign entities, and embodying them in an agreement covering the specific elements of the proposed activity.

c.(1). Discussions and negotiations shall be conducted jointly by the relevant Mission Directorate, Center or Component Facility and the Office of External Relations.

(2). In this joint effort, the cognizant Mission Directorate and Center or Component Facility shall be responsible for determining the technical, scientific, and programmatic desirability, feasibility, content, cost impact, environmental impact, timing, adequacy of the proposed management structure, and policy related to specific programmatic aspects of the activity, including safety, security, IT security, and mission-assurance requirements.

(3). The Office of External Relations shall be responsible for policy aspects from the Administration's and Agency's perspective, the negotiating framework, and all appropriate coordination activities.

6. DELEGATION OF AUTHORITY

None.

7. MEASUREMENTS/VERIFICATION

None.

8. CANCELLATION

None.

/s/ Michael D. Griffin
Administrator

ATTACHMENT A: (TEXT)

None.

(URL for Graphic)

None.

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